DOCUMENT RESUME

ED 261 479 EC 180 545

TITLE Discipline for Handicapped Children.
INSTITUTION Education Law Center, Inc., Newark, N.J.
PUB DATE Oct 84
NOTE 5p.
AVAILABLE FROM Education Law Center, Inc. Room 209, 155 Washington St., Newark, NJ 07102
PUB TYPE Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Behavior Problems; Court Litigation; *Disabilities; *Discipline; Elementary Secondary Education; *Expulsion; Federal Legislation; *Individualized Education Programs; School Policy; State Legislation; State Standards; *Suspension
IDENTIFIERS *New Jersey

ABSTRACT

The paper addresses New Jersey and federal regulations and legislation regarding discipline for handicapped students. Policies regarding such minor disciplinary action as detention, work assignment, in-school suspension, or temporary assignment to a time-out room are considered. The role of the Individualized Education Programs in determining appropriateness of disciplinary sanctions is stressed. Policies and procedures regarding suspension and expulsion are described, and relevant court cases cited. Legal requirements of procedural safeguards for a change of placement are specified. (CL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Marilyn J. Morheuser

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

BEST COPY AVAILABLE

Education Law Center, Inc.
Room 209
155 Washington Street
Newark, New Jersey 07102
201-624-1815

2100 Lewis Tower Building
225 South 15th Street
Philadelphia, Pennsylvania 19102
215-732-6655

ED261479

DISCIPLINE FOR HANDICAPPED CHILDREN

Federal legislation, New Jersey regulations and court decisions have placed limitations on the measures available to school administrators when disciplining special education students. Public Law 94-142, the Education for All Handicapped Children Act of 1975, Section 504 of the Rehabilitation Act of 1973 and the New Jersey Administration Code, Title 6, provide that although educationally handicapped students are subject to school disciplinary procedures, no handicapped student may be disciplined if that student's behavior is caused primarily by his or her handicapping condition.[1] Furthermore, severe disciplinary measures such as suspension or expulsion may not be used to effectively change a handicapped student's educational placement, absent full compliance with the procedural safeguards of special education law.[2]

Minor Disciplinary Action

New Jersey regulations provide that prior to disciplining an educationally handicapped student, consideration must be given by school district staff to the nature of the offending behavior in light of the student's handicapping condition and educational needs.[3] This does not mean, however, that school districts are left without means to effectively deal with emergency situations or impose minor disciplinary sanctions. Handicapped students may be subject to disciplinary measures such as detention, work assignment, in-school suspension, temporary assignment to a time-out room, or a simple lecture. Furthermore, New Jersey regulations provide that even more severe discipline may be imposed on a temporary basis if there is ongoing peril of physical harm to the child or to others, or of substantial disruption of

1 N.J.A.C. 6:28-2.8

2 Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978)
Kaelin v. Grubbs, 682 F. 2d 595 (6th Cir. 1982)
S.L. v. Turlington, 635 F. 2d 342 (5th Cir. 1981)

3 N.J.A.C. 6:28-1.8(b)

EC180545

New Jersey Trustees:
Rev. Samuel Appel, Stephen Eisdorfer, Esq., Gladys Styles Johnston, Cole A. Lewis, Helen Lindsay, James A. Louis, Esq., Ana Maria Schuhmann, Annamay T. Sheppard, Esq., Paul L. Tractenberg, Esq., Stanley C. Van Ness, Esq., James R. Zazzali, Esq.

Pennsylvania Trustees
Happy Craven Fernandez, Robert D. Fleischer, F. John Hagele, Esq., Germaine Ingram, Esq., Peter J. Kuriloff, Beverly Jean Lucas, Esq., Vincent Pieri, Barbara Zemboch Presseisen, Nitza Quinones-Alejandro, Esq., Joseph A. Torregrossa, Esq., Mark P. Widoff, Esq.

Executive Director: Marilyn J. Morheuser

Managing Attorney, Pa.: Janet F. Stotland

the educational process.[4]

In considering whether a disciplinary sanction is appropriate, the student's Individualized Education Program (IEP) is essential. The IEP is a written plan which describes in detail the student's educational program for the school year. It is the product of a joint effort by the child's parents, teachers, and child study team members as well as the child if he or she is able to participate. Such a plan is required for every child who has been classified as handicapped.[5] If the IEP does not recognize or anticipate behavioral manifestations of the handicapping condition that may lead to disciplinary problems and suggest appropriate management strategy, then the IEP is inadequate and it should be revised. The child study team should be part of the revision effort so that their professional expertise can be used to identify behavior management techniques that do not punish the child for his handicap, but rather are positive methods of providing an overall educational program appropriate to his or her needs.

Suspension or Expulsion

Students who have been classified as handicapped may not be excluded from their current educational placement except in an emergency or in accordance with prescribed procedures for a change in educational placement. A long term suspension or an expulsion of a handicapped student does constitute a change of placement.

The Education of All Handicapped Children Act, 20 U.S.C. §1401 et seq., was enacted to ensure that all handicapped children are afforded a free appropriate public education which concentrates on the unique needs of the individual child. An important feature of the Act is the mandate that due process procedures be followed whenever there is a potential for change in the child's educational placement. Case law clarifies the length of a suspension which is considered to have effectively changed a handicapped student's placement. In Stuart v. Nappi, supra, the court held that school authorities may deal with emergencies by suspending handicapped children for a short time. Under Connecticut law, suspensions of ten consecutive days or less did not constitute a change in the handicapped student's placement. Although New Jersey does not have a statute which sets a limit for short-term suspensions, the ruling of the United States Supreme Court in Goss v. Lopez, 419 U.S. 565 (1975), which provides only limited procedural rights for suspensions of ten days or less, suggests that ten days should be the outside limit on time out of school before the child's placement has effectively changed.

Furthermore, under New Jersey law, at the time of any suspension, regardless of its duration, parents must receive written notification of the action taken and a description of the reasons for the suspension.[6]

4 N.J.A.C. 6:28-2.8(b)(1)

5 N.J.A.C. 6:28-2.1

6 N.J.A.C. 6:28-2.8(c)

BEST COPY AVAILABLE

In addition, when the suspension of a handicapped student exceeds ten days in a school year, the child study team must conduct a complete evaluation to determine the appropriateness of the child's IEP in light of the cause of the child's misbehavior and must prepare and forward to the principal and parents a written report with recommendations.[7] State administrative regulations further require that as a prerequisite to any board action on expulsion, the student (whether previously classified as handicapped or not) must be referred to the district's child study team to determine whether the child needs special education or alteration of his present classification, program, or placement.[8] The Commissioner has held that the recommendations of these experts must be heeded by the school district to prevent an unreasonable denial of the student's right to an education.[9] In addition, any board action to expel, if taken absent such safeguards, would contravene P.L. 94-142 and state law and regulation.

In the event that an emergency persists while the legal requirements for a placement change are being followed, the student must be provided an alternative interim placement, and the school district must demonstrate in a proceeding before the Office of Administrative Law that the return of the child to his original placement during the interim period will cause serious harm to that child or to other children or school staff.[10] Unclassified students who are being evaluated by the child study team for possible classification may be excluded from school for a period of time not to exceed 30 days while the evaluation process is being completed. Home instruction must be provided by the district during that time period.[11]

Procedural Safeguards for Change of Placement

P.L. 94-142 requires any state or local education agency which receives federal financial assistance to guarantee procedural safeguards with respect to the provision of a free appropriate public education by such agencies. As a result, any handicapped student, prior to exclusion from the regular school program or termination of participation in a special education program, must be given, at a minimum, the following

7 N.J.A.C. 6:28-2.8(d)

8 N.J.A.C. 6:28-2.8(e)and (f)

9 Scher v. Board of Education of West Orange, 1968 S.L.D. 92; R.K. v. Board of Education of Lakewood, 1974 S.L.D. 100, 104

10 N.J.A.C. 6:28-2.8(b)(1) and (2)

11 N.J.A.C. 6:28-3.2(d)

BEST COPY AVAILABLE

due process rights:

1. An opportunity for the parents or guardian of the child to examine all the child's relevant records and to obtain an independent educational evaluation of the child;

2. Written prior notice whenever the district proposes a change in the child's program or placement, as well as written notification of any suspension, regardless of its duration. The notice required must fully inform the parents or guardians of the reasons for any suspension and of the due process procedures available. Unless it is clearly unfeasible, such notice should be in the parents' native language;

3. An opportunity for the parents to present any complaint or objection they may have to the school district administration.12

New Jersey regulations which implement procedures in compliance with the requirements of P.L. 94-142 and §504 of the Rehabilitation Act of 1973 are contained in Chapter 28 of Title 6 of the New Jersey Administrative Code. The due process procedures are specifically set out in N.J.A.C. 6:28-2.7 et seq. A copy of these regulation must be furnished to parents by local school districts upon request. Similarly, upon parental request, districts must provide a copy of the New Jersey statutes pertaining to special education and the general regulations governing access to pupil records.13 For further details on the role of parents in the special education of their children, you may wish to consult the ELC manual, Special Rights for Special Children, available at the Newark office of Education Law Center.

12 20 U.S.C. §1415(b)

13 N.J.A.C. 6:28-2.1(f)

DATED: October 1984

The work resulting in this publication was conducted under grants from the Ford Foundation, the Fund for New Jersey, Hoffman-LaRoche, Inc., the Pathy Educational and Charitable Foundation, the Prudential Foundation, the Red Devil Foundation, and the Visceglia Foundation. The views expressed do not necessarily reflect those of the funding agencies.

Part or all of this publication may be reproduced or duplicated if credited to the Education Law Center, Inc.